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May 19, 1958

OCT 01 1998

CONCORD, N.H.

Paul E. Farnum, Acting Commissioner of Education
State House Annex
Concord, New Hampshire

Dear Mr. Farnum:

This is in reply to your letter of May 15, 1958 in which you request my interpretation of RSA 197:17 which provides as follows:

"197:17 Election. The moderator, the clerk, school board and treasurer shall be chosen by ballot by a majority vote, provided that if the district has adopted the non-partisan ballot system for the election of its officers the said officers shall be chosen by plurality vote. Each of said officers shall take an oath of office the same as is required of town officers by section 2, chapter 42, RSA." (emphasis added)

In your letter you state that you wish to have my interpretation of the above quoted section relative to the election of a school board member in absentia. From the tenor of your letter I understand your specific inquiry to be whether or not in the case of a three-man school board, the retiring member of the board would continue to serve in office until the newly elected member returned and took the oath of office. We reply in the affirmative.

By virtue of the last sentence of RSA 197:17 the Legislature has made the taking of an oath of office one of the qualifications for school board members. RSA 197:18 provides in part that "One third of the members of the school board shall be chosen each year to hold office for three years and until their successors are chosen and qualified" Reading the two sections together it seems clear, at least in the case of a three-man board, that where a new member is elected in absentia, the retiring member would continue in office until the newly elected member returned and took the oath of office required by RSA 197:17.

By dictum in the case of Glidden v. Tola, 31 N.H. 147 our Supreme Court has stated in effect that where one elected to a town office neglects to take the oath of office for an unreasonable time, the

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selectmen may treat his conduct as a refusal to accept the office and treat the office as being vacant. The Court made no attempt to say what would constitute "unreasonable" length of time in any given case.

If this letter does not fully answer your inquiry please feel free to communicate further with me.

Very truly yours,

GTRJr/m

George T. Ray, Jr.
Assistant Attorney General